



February 10, 2015

HOUSE BILL No. 1351

DIGEST OF HB 1351 (Updated February 3, 2015 6:28 pm - DI 87)

Citations Affected: IC 1-1; IC 2-5; IC 4-22.

Synopsis: Regulatory powers of state agencies. Establishes the office of regulatory accountability in the legislative services agency to proposed and adopted guidelines, standards, or policies for compliance with regulatory goals specified by the general assembly. Provides that an agency's statutory authority to regulate and implement programs does not include rulemaking or policymaking authority that is not based upon a federal requirement or that exceeds the authority granted to a federal or state agency under federal statutory authority. Provides an exception that rules, guidelines, standards, or other policies that are not based upon a federal requirement or specific statutory authority may be based upon: (1) the general authority of an agency, subject to limits in the grant of the authority and upon the subject matter; or (2) the power to adopt emergency rules.

Effective: July 1, 2015.

Wolkins

January 14, 2015, read first time and referred to Committee on Government and Regulatory Reform.
February 9, 2015, amended, reported — Do Pass.

HB 1351—LS 7386/DI 51



February 10, 2015

First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1351

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 1-1-15 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2015]:

4 **Chapter 1. Construction of Statutes Granting Regulatory**
5 **Powers to State Agencies**

6 **Sec. 1. This chapter applies to any entity exercising any part of**
7 **the executive powers of the state, including the administrative**
8 **department and any body and corporate or other instrumentality**
9 **of the state.**

10 **Sec. 2. The powers of a governmental agency to adopt rules or**
11 **other policies with the force of law shall be strictly construed.**

12 **Sec. 3. Except as provided in section 4 of this chapter, a grant of**
13 **statutory authority to a governmental agency to regulate the duties**
14 **or other obligations of any person, participate in any federal or**
15 **other governmental program, develop a plan for any federal or**

HB 1351—LS 7386/DI 51



1 other governmental program, or adopt rules, guidelines, standards,
 2 or other policies to implement a federal or other governmental
 3 program shall not be construed to grant rulemaking or other
 4 policy making authority that:

- 5 (1) is not based upon a federal requirement;
- 6 (2) exceeds the authority granted to a federal or state agency
- 7 under federal statutory authority; or
- 8 (3) is not specifically authorized by state statute.

9 **Sec. 4.** The adoption of rules, guidelines, standards, or other
 10 policies that are not based upon a federal requirement or specific
 11 statutory authority may be based upon:

- 12 (1) the general authority of an agency subject to any limits:
- 13 (A) in the grant of the authority; and
- 14 (B) upon the subject matter; or
- 15 (2) the power to adopt emergency rules in the manner
- 16 provided under IC 4-22-2-37.1.

17 SECTION 2. IC 2-5-1.1-20 IS ADDED TO THE INDIANA CODE
 18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 19 1, 2015]: **Sec. 20.** (a) As used in this section, "office" refers to the
 20 office of regulatory accountability established by subsection (b).

21 (b) The office of regulatory accountability is established in the
 22 legislative services agency under the direction of the executive
 23 director of the legislative services agency.

24 (c) The office:

- 25 (1) shall review:
- 26 (A) each proposed and emergency rule submitted for
- 27 publication in the Indiana Register; and
- 28 (B) each adopted rule submitted to the attorney general
- 29 under IC 4-22-2-31 or IC 4-22-2-40; and
- 30 (2) may review, upon request by a member of the general
- 31 assembly, each proposed and adopted guideline, standard, or
- 32 other policy;

33 for compliance with the standards in IC 1-1-15 and IC 4-22-2-19.5.
 34 The office may carry out other duties as assigned by the legislative
 35 council or the executive director of the legislative services agency.

36 (d) The office may require the agency to submit any supporting
 37 documentation that the office of regulatory accountability
 38 considers necessary for the office's review under this section. The
 39 agency may submit any additional supporting documentation the
 40 agency considers necessary. Information submitted to the office
 41 shall be submitted in an electronic format under IC 5-14-6.

42 (e) Not more than thirty (30) days after receiving a rule,



1 guideline, standard, or other policy described in subsection (c) the
 2 office shall submit its findings (if any) concerning the rule,
 3 guideline, standard, or other policy to the following:

- 4 (1) The adopting agency.
- 5 (2) The office of the attorney general.
- 6 (3) The office of management and budget.
- 7 (4) The small business ombudsman designated under
- 8 IC 4-4-35-8.

9 The office may accompany a report under this subsection with any
 10 other advisory matters and participate in any public hearings
 11 concerning rules, guidelines, standards, or other policies, as
 12 determined appropriate by the office.

13 (f) The office shall annually submit a report concerning its
 14 activities and findings to the legislative council in an electronic
 15 format under IC 5-14-6.

16 (g) Failure of the office to determine that a rule, guideline,
 17 standard, or other policy violates IC 1-1-15 or IC 4-22-2-19.5 may
 18 not be construed as validating any rule, guideline, standard, or
 19 other policy that otherwise violates IC 1-1-15 or IC 4-22-2-19.5.

20 SECTION 3. IC 4-22-2-28, AS AMENDED BY THE TECHNICAL
 21 CORRECTIONS BILL OF THE 2015 GENERAL ASSEMBLY, IS
 22 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]:

23 Sec. 28. (a) The following definitions apply throughout this section:

24 (1) "Ombudsman" refers to the small business ombudsman
 25 designated under IC 4-4-35-8.

26 (2) "Total estimated economic impact" means the direct annual
 27 economic impact of a rule on all regulated persons after the rule
 28 is fully implemented under subsection (g).

29 (b) The ombudsman:

30 (1) shall review a proposed rule that:

31 (A) imposes requirements or costs on small businesses (as
 32 defined in IC 4-22-2.1-4); and

33 (B) is referred to the ombudsman by an agency under
 34 IC 4-22-2.1-5(c); and

35 (2) may review a proposed rule that imposes requirements or
 36 costs on businesses other than small businesses (as defined in
 37 IC 4-22-2.1-4).

38 After conducting a review under subdivision (1) or (2), the ombudsman
 39 may suggest alternatives to reduce any regulatory burden that the
 40 proposed rule imposes on small businesses or other businesses. **Any**
 41 **findings or suggestions provided to an agency under this subsection**
 42 **shall at the same time be provided to the legislative council in an**



1 **electronic format under IC 5-14-6.** The agency that intends to adopt
2 the proposed rule shall respond in writing to the ombudsman
3 concerning the ombudsman's comments or suggested alternatives
4 before adopting the proposed rule under section 29 of this chapter.

5 (c) Subject to subsection (e) and not later than fifty (50) days before
6 the public hearing for a proposed rule required by section 26 of this
7 chapter, an agency shall submit the proposed rule to the office of
8 management and budget for a review under subsection (d), if the
9 agency proposing the rule determines that the rule will have a total
10 estimated economic impact greater than five hundred thousand dollars
11 (\$500,000) on all regulated persons. In determining the total estimated
12 economic impact under this subsection, the agency shall consider any
13 applicable information submitted by the regulated persons affected by
14 the rule. To assist the office of management and budget in preparing
15 the fiscal impact statement required by subsection (d), the agency shall
16 submit, along with the proposed rule, the data used and assumptions
17 made by the agency in determining the total estimated economic
18 impact of the rule.

19 (d) Except as provided in subsection (e), before the adoption of the
20 rule, and not more than forty-five (45) days after receiving a proposed
21 rule under subsection (c), the office of management and budget shall
22 prepare, using the data and assumptions provided by the agency
23 proposing the rule, along with any other data or information available
24 to the office of management and budget, a fiscal impact statement
25 concerning the effect that compliance with the proposed rule will have
26 on:

27 (1) the state; and

28 (2) all persons regulated by the proposed rule.

29 The fiscal impact statement must contain the total estimated economic
30 impact of the proposed rule and a determination concerning the extent
31 to which the proposed rule creates an unfunded mandate on a state
32 agency or political subdivision. The fiscal impact statement is a public
33 document. The office of management and budget shall make the fiscal
34 impact statement available to interested parties upon request and to the
35 agency proposing the rule. The agency proposing the rule shall
36 consider the fiscal impact statement as part of the rulemaking process
37 and shall provide the office of management and budget with the
38 information necessary to prepare the fiscal impact statement, including
39 any economic impact statement prepared by the agency under
40 IC 4-22-2.1-5. The office of management and budget may also receive
41 and consider applicable information from the regulated persons
42 affected by the rule in preparation of the fiscal impact statement.



(e) With respect to a proposed rule subject to IC 13-14-9:

(1) the department of environmental management shall give written notice to the office of management and budget of the proposed date of preliminary adoption of the proposed rule not less than sixty-six (66) days before that date; and

(2) the office of management and budget shall prepare the fiscal impact statement referred to in subsection (d) not later than twenty-one (21) days before the proposed date of preliminary adoption of the proposed rule.

(f) In determining whether a proposed rule has a total estimated economic impact greater than five hundred thousand dollars (\$500,000), the agency proposing the rule shall consider the impact of the rule on any regulated person that already complies with the standards imposed by the rule on a voluntary basis.

(g) For purposes of this section, a rule is fully implemented after:

(1) the conclusion of any phase-in period during which:

(A) the rule is gradually made to apply to certain regulated persons; or

(B) the costs of the rule are gradually implemented; and

(2) the rule applies to all regulated persons that will be affected by the rule.

In determining the total estimated economic impact of a proposed rule under this section, the agency proposing the rule shall consider the annual economic impact on all regulated persons beginning with the first twelve (12) month period after the rule is fully implemented. The agency may use actual or forecasted data and may consider the actual and anticipated effects of inflation and deflation. The agency shall describe any assumptions made and any data used in determining the total estimated economic impact of a rule under this section.

(h) An agency shall provide the legislative council in an electronic format under IC 5-14-6 with any analysis, data, and description of assumptions submitted to the office of management and budget under this section or section 40 of this chapter at the same time the agency submits the information to the office of management and budget. The office of management and budget shall provide the ~~administrative rules oversight committee~~ **with legislative council in an electronic format under IC 5-14-6** any fiscal impact statement and related supporting documentation prepared by the office of management and budget under this section or section 40 of this chapter at the same time the office of management and budget provides the fiscal impact statement to the agency proposing the rule. Information submitted under this subsection must identify the rule to which the information is related by document



control number assigned by the publisher.

(i) An agency shall provide the legislative council in an electronic format under IC 5-14-6 with any economic impact or fiscal impact statement, including any supporting data, studies, or analysis, prepared for a rule proposed by the agency or subject to readoption by the agency to comply with:

(1) a requirement in section 19.5 of this chapter to minimize the expenses to regulated entities that are required to comply with the rule;

(2) a requirement in section 24 of this chapter to publish a justification of any requirement or cost that is imposed on a regulated entity under the rule;

(3) a requirement in IC 4-22-2.1-5 to prepare a statement that describes the annual economic impact of a rule on all small businesses after the rule is fully implemented;

(4) a requirement in IC 4-22-2.5-3.1 to conduct a review to consider whether there are any alternative methods of achieving the purpose of the rule that are less costly or less intrusive, or that would otherwise minimize the economic impact of the proposed rule on small businesses;

(5) a requirement in IC 13-14-9-3 or IC 13-14-9-4 to publish information concerning the fiscal impact of a rule or alternatives to a rule subject to these provisions; or

(6) a requirement under any other law to conduct an analysis of the cost, economic impact, or fiscal impact of a rule;

regardless of whether the total estimated economic impact of the proposed rule is more than five hundred thousand dollars (\$500,000), as soon as practicable after the information is prepared. Information submitted under this subsection must identify the rule to which the information is related by document control number assigned by the publisher.

SECTION 4. IC 4-22-2-31, AS AMENDED BY P.L.123-2006, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 31. After an agency has complied with section 29 of this chapter, or with IC 13-14-9-9(1) or IC 13-14-9-9(2), as applicable, the agency shall submit its rule to the attorney general for approval **and the office of regulatory accountability established by IC 2-5-1.1-20 for review.** The agency shall submit the following to the attorney general **and the office of regulatory accountability:**

(1) The rule in the form required by section 20 of this chapter.

(2) The documents required by section 21 of this chapter.

(3) Written authorization to proceed issued by the publisher under



section 24(g) of this chapter.

(4) Any other documents specified by the attorney general.

The attorney general **or the office of regulatory accountability** may require the agency to submit any supporting documentation that the attorney general **or the office of regulatory accountability** considers necessary for the attorney general's review under section 32 of this chapter. The agency may submit any additional supporting documentation the agency considers necessary. **Information submitted to the office of regulatory accountability shall be submitted in an electronic format under IC 5-14-6.**

SECTION 5. IC 4-22-2-40, AS AMENDED BY P.L.53-2014, SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 40. (a) At any time before a rule is accepted for filing by the publisher under section 35, 37.1, or 38 of this chapter, the agency that adopted the rule may recall it. A rule may be recalled regardless of whether:

(1) the rule has been disapproved by the attorney general under section 32 of this chapter; or

(2) the rule has been disapproved by the governor under section 34 of this chapter.

(b) Sections 24 through 38 of this chapter do not apply to a recall action under this section. However, the agency shall distribute a notice of its recall action to the publisher for publication in the Indiana Register. Sections 24 and 26 of this chapter do not apply to a readoption action under subsection (c).

(c) After an agency recalls a rule, the agency may reconsider its adoption action and adopt an identical rule or a revised rule. However, if sections 24 through 36 of this chapter apply to the recalled rule, the readopted rule must comply with the requirements under section 29 of this chapter.

(d) The recall of a rule under this section voids any approval given after the rule was adopted and before the rule was recalled.

(e) If a rule is:

(1) subject to sections 31 and 33 of this chapter;

(2) recalled under subsection (a); and

(3) readopted under subsection (c);

the agency shall resubmit the readopted version of the recalled rule to the attorney general and the governor for approval **and the office of regulatory accountability established by IC 2-5-1.1-20 for review.** The attorney general and the governor have the full statutory period to approve or disapprove the readopted rule. If the recalled rule was submitted to the office of management and budget under section 28 of



1 this chapter, the agency shall resubmit the readopted version of a
2 recalled rule to the office of management and budget with sufficient
3 information for the office of management and budget to evaluate
4 whether its initial fiscal impact statement under section 28 of this
5 chapter needs to be revised. The office of management and budget shall
6 revise a fiscal impact statement under section 28 of this chapter if the
7 fiscal impact of the readopted rule is substantially different from the
8 recalled rule. The agency also shall comply with any other applicable
9 approval requirement provided by statute.

10 (f) The readopted version of a recalled rule is effective only after the
11 agency has complied with section 35, 37.1, or 38 of this chapter.

12 SECTION 6. IC 4-22-2-44, AS AMENDED BY P.L.220-2011,
13 SECTION 46, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2015]: Sec. 44. Except as provided in section 44.3 of this
15 chapter, a rulemaking action that does not conform with this chapter **or**
16 **is taken, after June 30, 2015, without submitting documentation to**
17 **the office of regulatory accountability as required under**
18 **IC 2-5-1.1-20** is invalid, and a rule that is the subject of a
19 noncomplying rulemaking action does not have the effect of law until
20 it is adopted in conformity with this chapter. However, the failure of an
21 agency to comply with section 20(a)(2) of this chapter does not
22 invalidate the rulemaking action.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1351, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 10 through 12.

Page 1, line 13, delete "3." and insert "2.".

Page 1, line 15, delete "4." and insert "3.".

Page 1, line 15, delete "specifically authorized by statute," and insert **"provided in section 4 of this chapter,"**.

Page 2, delete lines 8 through 27, begin a new line block indented and insert:

"(1) is not based upon a federal requirement;

(2) exceeds the authority granted to a federal or state agency under federal statutory authority; or

(3) is not specifically authorized by state statute.

Sec. 4. The adoption of rules, guidelines, standards, or other policies that are not based upon a federal requirement or specific statutory authority may be based upon:

(1) the general authority of an agency subject to any limits:

(A) in the grant of the authority; and

(B) upon the subject matter; or

(2) the power to adopt emergency rules in the manner provided under IC 4-22-2-37.1."

Page 2, delete lines 35 through 42, begin a new paragraph and insert:

"(c) The office:

(1) shall review:

(A) each proposed and emergency rule submitted for publication in the Indiana Register; and

(B) each adopted rule submitted to the attorney general under IC 4-22-2-31 or IC 4-22-2-40; and

(2) may review, upon request by a member of the general assembly, each proposed and adopted guideline, standard, or other policy;

for compliance with the standards in IC 1-1-15 and IC 4-22-2-19.5. The office may carry out other duties as assigned by the legislative council or the executive director of the legislative services agency."

Page 3, line 7, delete "rule" and insert **"rule, guideline, standard, or other policy"**.

Page 3, line 9, delete "rule" and insert **"rule, guideline, standard, or other policy"**.

HB 1351—LS 7386/DI 51



Page 3, line 17, after "rules," insert "**guidelines, standards, or other policies,**".

Page 3, line 21, after delete "rule" and insert "**rule, guideline, standard, or other policy**".

Page 3, line 22, delete "IC 1-1-15-6" and insert "**IC 1-1-15**".

Page 3, line 23, delete "rule" and insert "**rule, guideline, standard, or other policy**".

Page 3, line 23, delete "IC 1-1-15-6" and insert "**IC 1-1-15**".

and when so amended that said bill do pass.

(Reference is to HB 1351 as introduced.)

LUCAS

Committee Vote: yeas 7, nays 4.

